

REMARKS

As a preliminary matter, Applicant thanks the Examiner for the allowance of claims 1-20.

Claim 21 stands rejected under 35 U.S.C. 101, for being “directed to a recording medium storing nonfunctional descriptive material.” Applicant respectfully traverses this rejection because the process recited in claim 21 of the present invention is not “nonfunctional descriptive material,” as asserted by the Examiner.

Applicant acknowledges the Examiner’s assertion that “data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are neither physical ‘things’ nor statutory processes.” This general rule, however, is simply not applicable to claim 21 of the present invention, because the Examiner has not shown how claim 21 recites such nonstatutory “data structures.” The MPEP relied upon by the Examiner even contradicts this assertion.

Section 2106.IV.1 of the MPEP defines “nonstatutory subject matter,” which includes nonfunctional descriptive material, as arrangements of music, literary works, compilations or mere arrangements of data, or the like. Claim limitations though, that present “requisite functionality to satisfy the practical application requirement” are statutory, and are not considered “nonfunctional descriptive material.” Subsection (b) further excludes from the definition of “nonfunctional descriptive material” material that “exhibits any functional interrelationship with the way in which computing processes are performed.”

The process limitations recited in claim 21 of the present invention therefore, clearly represent such “functional interrelationships with the way in which computing processes are performed,” are not mere data structures, and are therefore statutory subject matter according to the portions of the MPEP cited by the Examiner. Claim 21 is drawn toward a computer-readable storage medium on which is recorded a program that executes a particular process, among other things. The recited process features many steps, including at least: (1) examining the performance of a storage unit; (2) obtaining the size of a block; (3) comparing the performance with the sum of encoding rates; and (4) setting a management block based on the size obtained. Any and all of these recited steps clearly exhibit a “functional interrelationship with the way in which computing processes are performed,” and therefore cannot be considered to be nonfunctional descriptive material. Accordingly, claim 21 does not satisfy the definition of “nonstatutory subject matter,” as asserted by the Examiner, and the rejection of claim 21 under Section 101 should be withdrawn.

For all of the foregoing reasons, Applicant submits that this entire Application, including claims 1-21, is in condition for allowance, which is respectfully requested. The Examiner is invited to contact the undersigned attorney if an interview would help expedite prosecution.

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